

EXCERPT FROM THE 2012 HAMPTON ZONING ORDINANCE

Note: This is the revised version of the Wetlands Conservation District Zoning Ordinance based on the March 2012 Town Vote.

Section 2.3 Wetlands Conservation District

2.3.1 PURPOSES. In the interest of protecting the public health, safety and welfare the Wetlands Conservation District has been established to protect, preserve and prevent the despoliation and unregulated alterations of 1) tidal and inland wetlands, 2) areas of very poorly drained soils and poorly drained soils and 3) their buffers. It is in the public interest to protect the valuable functions these areas provide such as habitat for fish, wildlife and flora, ground water protection, storm water and flood control, nutrient and pollutant filtering, recreation and aesthetic enjoyment. (Amended March 2005, March 2012)

The Wetlands Conservation District is intended to:

- A.** Prevent the destruction and preserve the integrity and health of wetlands and areas of very poorly drained soils and poorly drained soils and their buffers, all of which provide flood protection, connection to the ground or surface water supply, filtration of water flowing into ponds and streams, and augmentation of stream flow during dry periods; (Amended March 2012)
- B.** Prevent the development of structures and land uses on wetlands, areas of very poorly drained soils and poorly drained soils, and their buffers, which would contribute to pollution of surface and ground water by sewage or other wastes or toxic materials; (Amended March 2012)
- C.** Prevent unnecessary or excessive expense to the Town for provision and maintenance of essential services and utilities;
- D.** Deleted. (Amended March 1998)
- E.** Protect wildlife habitat, maintain ecological balance and enhance ecological values;
- F.** Preserve and enhance the aesthetic values associated with wetlands and areas of very poorly drained soils and poorly drained soils and their buffers in Hampton; (Amended March 2012)
- G.** Prevent construction or earth moving activities in wetlands and their buffers, which could impact adjacent property. (Amended March 1998)

2.3.2 DEFINITIONS AND DELINEATIONS. Detailed descriptive materials and maps of wetlands and wetlands soils and flora in the Town of Hampton are found in the reports listed in the Appendix to this section and are incorporated herein by reference.

A. Tidal Wetlands are defined and delineated as:

- 1.** Prime tidal wetlands are defined in Appendices 1 & 2, but also include the Atlantic Ocean and Hampton Harbor and their associated tidal waters. A more detailed or updated study accepted by the Hampton Planning Board upon recommendation of the Conservation Commission shall supersede Appendices 1 & 2 where it is shown to be incomplete or inaccurate. (Amended March 2005, March 2009)

- 2.** Deleted. (Amended March 1998)

B. Inland Wetlands means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. (Amended 2005)

C. Areas of very poorly drained soils and poorly drained soils

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1. Very poorly drained soils are those soils in which water is removed from the soil so slowly that the water table remains at or on the ground surface most of the year.
 2. Poorly drained soils are those soils in which water is removed so slowly that the soil remains wet for a large part of the year. A poorly drained soil has a water table near the ground surface that keeps the soil wet for seven to nine months of the year.
- D. “Buffer”** is the area extending fifty feet (50 ft.) out from 1) the wetland boundary line, and/or 2) the boundary line of areas of very poorly drained soils and poorly drained soils. The buffer is intended to provide a natural vegetative zone between the upland and the wetland for water filtration, storm water retention, flood protection and wildlife. (Amended 2005, March 2012)
- E. The Wetlands Conservation District** includes Tidal Wetlands, Inland Wetlands, areas of very poorly drained soils and poorly drained soils, and their buffers. In case of any question, the precise location of a wetland boundary in any particular case must be determined by on-site inspection of soil types and vegetation. (Amended March 2005, March 2012)
- F.** Any more detailed or updated study accepted by the Hampton Planning Board upon recommendation of the Conservation Commission shall supersede the Soils Conservation Service study where it is shown to be incomplete or inaccurate. (Amended March 1998, March 2012)
- G.** The Hampton Salt Marsh complex as mapped in Exhibit 27 in the February 8, 2006 “Prime Wetland Inventory Report” by Gove Environmental Services, Inc. and as later also described in said Report under Recommendations for Hampton Prime Wetlands, is hereby designated a prime wetland for purposes of RSA 482-A:15 and Department of Environmental Services regulations. (Adopted March 2009, Amended 2012)

2.3.3 PERMITTED USES. Uses permitted in the Wetlands Conservation District are those which do not result in the erection of any structure, alter the surface configuration by a) dredging, b) adding fill, or c) increasing the amount of impervious surface. An impervious surface is any surface that cannot effectively absorb or infiltrate water. Examples of impervious surfaces include, but are not limited to, roofs, decks less than six (6) feet off the ground, patios, and asphalt or concrete driveways, parking areas, or walkways unless same are designed to effectively absorb or infiltrate water. (Amended and adopted March 2012)

A. The following uses are permitted in tidal wetlands and their buffers as defined in subsection 2.3.2 A.: (Amended March 2012)

1. By Special Permit only, forestry and tree farming may be performed provided that best management practices, including leaving all stumps intact, are used to minimize siltation and protect wildlife habitat. Tree removal shall also comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B). (Amended March 2012)
2. Agriculture, such as harvesting marsh hay and gathering cast-up for fertilizer, provided that heavy equipment shall not be used in the wetlands.
3. Wildlife refuge, conservation areas and nature trails.
4. Education and recreational uses compatible with the purposes of the district.
5. By Special Permit only, seawalls (including access structures), fences, footbridges, catwalks and wharves may be constructed on tidal wetlands and must be constructed on posts and pilings (except seawalls) such as to permit the unobstructed flow of the tide and preserve the natural vegetation and contour of the tidal wetlands. (Amended March 1998, March 2012)
6. By Special Permit only, drainage ways as paths for normal runoff provided that they are constructed according to drainage plans, consistent with the purposes of the Wetlands

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Conservation District ordinance and approved by the Planning Board, in consultation with the Conservation Commission. (Amended 1998, March 2012)

7. By Special Permit only, roads, driveways, access ways, utilities and power lines may be constructed in the Wetlands Conservation District, provided that the following conditions exist:

- a. Proposed construction is essential to the productive use of upland outside the Wetlands Conservation District;
 - b. Design and construction methods will be such as to minimize any impact upon the site, and will include restoration of the site as nearly as possible to its original grade and vegetative condition;
 - c. An alternative with less impact, which does not cross a wetland or buffer, is not feasible;
 - d. The crossing will be at the point of least impact to the Wetlands Conservation District; (Adopted 2001)
 - e. Applications for all necessary permits shall be made concurrently.
- (Amended March, 1998, Amended and adopted March 2012)

8. Landscaping: Providing that the Building Inspector determines that:

- a. The area to be landscaped has been previously disturbed or cleared or is maintained as a lawn or beach;
- b. The disturbed or cleared area is not being expanded;
- c. If trees are to be removed, the stumps shall be left intact and the work shall comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B) (Adopted March 2012).
- d. The Building Inspector is satisfied that the proposed landscaping will not be contrary to the spirit or intent of the Wetlands Conservation District Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the Wetlands Conservation District, the proposed activity shall only be permitted if the landowner obtains a special permit in accordance with the provisions spelled out in the Wetlands Conservation District Ordinance). (Adopted March 2010, Amended March 2012)

B. The following uses are permitted in inland wetlands and their buffers:

1. By Special Permit only, forestry and tree farming may be performed provided that best management practices, including leaving all stumps intact, are used to minimize siltation and protect wildlife habitat. Tree removal shall also comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B). (Amended March 2012)
2. Agriculture, provided that best management practices are used. (Amended March 2012)
3. Construction of wells for water supply and water impoundments constructed pursuant to plan approved by the Rockingham County Conservation District.
4. By Special Permit only, drainage ways as paths for normal runoff provided that they are constructed according to drainage plans, consistent with the purposes of the Wetlands Conservation District ordinance and approved by the Planning Board, in consultation with the Conservation Commission. (Amended 1998, Amended 2012)
5. Wildlife habitat management, conservation areas and nature trails.
6. Parks and passive recreation uses consistent with the purposes set forth in Section 2.3.1. (Amended 1998)

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7. By Special Permit only, roads, driveways, access ways, utilities and power lines may be constructed in the Wetlands Conservation District, provided that the following conditions exist:

- a. Proposed construction is essential to the productive use of upland outside the Wetlands Conservation District;
- b. Design and construction methods will be such as to minimize any impact upon the site, and will include restoration of the site as nearly as possible to its original grade and vegetative condition;
- c. An alternative with less impact, which does not cross a wetland or buffer, is not feasible;
- d. The crossing will be at the point of least impact to the Wetlands Conservation District; (Adopted 2001)
- e. Applications for all necessary permits shall be made concurrently. (Amended March, 1998)

8. Deleted (Amended 1998)

9. Landscaping: Providing that the Building Inspector determines that:

- a. The area to be landscaped has been previously disturbed or cleared or is maintained as a lawn or beach;
- b. The disturbed or cleared area is not being expanded;
- c. If trees are to be removed, the stumps shall be left intact and the work shall comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B). (Adopted March 2012)
- d. The Building Inspector is satisfied that the proposed landscaping will not be contrary to the spirit or intent of the Wetlands Conservation District Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the Wetlands Conservation District, the proposed activity shall only be permitted if the landowner obtains a special permit in accordance with the provisions spelled out in the Wetlands Conservation District Ordinance). (Adopted March 2010, Amended March 2012)

C. The following uses are permitted in areas of poorly and very poorly drained soils and their buffers:

1. By Special Permit only, forestry and tree farming may be performed provided that best management practices, including leaving all stumps intact, are used to minimize siltation and protect wildlife habitat. Tree removal shall also comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B).
2. Agriculture, provided that best management practices are used.
3. Construction of wells for water supply and water impoundments constructed pursuant to plan approved by the Rockingham County Conservation District.
4. By Special Permit only, drainage ways as paths for normal runoff provided that they are constructed according to drainage plans, consistent with the purposes of the Wetlands Conservation District ordinance and approved by the Planning Board, in consultation with the Conservation Commission. (Amended 1998)
5. Wildlife habitat management, conservation areas and nature trails.
6. Parks and passive recreation uses consistent with the purposes set forth in Section 2.3.1. (Amended 1998)

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7. By Special Permit only, roads, driveways, access ways, utilities and power lines may be constructed in the Wetlands Conservation District, provided that the following conditions exist:

- a. Proposed construction is essential to the productive use of upland outside the Wetlands Conservation District;
- b. Design and construction methods will be such as to minimize any impact upon the site, and will include restoration of the site as nearly as possible to its original grade and vegetative condition;
- c. An alternative with less impact, which does not cross a wetland or buffer, is not feasible;
- d. The crossing will be at the point of least impact to the Wetlands Conservation District; (Adopted 2001)
- e. Applications for all necessary permits shall be made concurrently. (Amended March, 1998)

8. Deleted (Amended 1998)

9. Landscaping: Providing that the Building Inspector determines that:

- a. The area to be landscaped has been previously disturbed or cleared or is maintained as a lawn or beach;
- b. The disturbed or cleared area is not being expanded;
- c. If trees are to be removed, the stumps shall be left intact and the work shall comply with the NHDES Shoreland Water Quality Protection Act (RSA 483-B).
- d. The Building Inspector is satisfied that the proposed landscaping will not be contrary to the spirit or intent of the Wetlands Conservation District Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the Wetlands Conservation District, the proposed activity shall only be permitted if the landowner obtains a special permit in accordance with the provisions spelled out in the Wetlands Conservation District Ordinance). (Adopted March 2010)

(Amended and adopted March 2012)

D. Other low density uses in Wetlands Conservation District as defined in this Ordinance may be undertaken only by Special Permit as provided in Section 2.3.5 of this Ordinance. (Amended 1998, Amended March 2012)

2.3.4 USE RESTRICTIONS AND PROHIBITED USES (Amended March 2012)

A. No septic system, leach field or other on-site waste disposal facility shall be installed within 75' (seventy-five) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils. In the event of failure of an existing system, the property must be tied into the town sewer system if available. If sewer is not available, an existing system may be replaced or repaired as necessary according to a design approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services. In the event the seventy-five foot (75') setback cannot be maintained, the replacement system shall meet the setback to the degree possible. (Amended 2005)

B. No structure, impermeable surface, parking space or building activity including dredging, filling or regrading shall be permitted within fifty feet (50') of any tidal or inland wetlands, or any area of very poorly drained soils and poorly drained soils, except as provided in Subsections C & D of this Section. Any construction, forestry and agriculture activities within one hundred feet (100 ft.) of any wetland, or any area of very poorly drained soils and poorly drained soils, shall be

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undertaken with special care to avoid erosion and siltation into the wetlands, or any area of very poorly drained soils and poorly drained soils. The Building Department or the Planning Board, pursuant to its Site Plan Review and/or Subdivision authority, Section 1.5 of the Town of Hampton Zoning Ordinance, may require an erosion control plan using Best Management Practices (see Appendix Number 4). (Amended 2005)

C. An existing building within the buffer zone may be repaired and/or replaced provided that the new or repaired structure, including any impermeable surface, shall not extend further into the buffer area than the original foundation. (Amended 1998)

D. Where a variance is granted for building on a pre-existing lot of record, the setback may be in line with the setback of existing buildings within 100' (one hundred feet) on either side. Where adjacent buildings are set back varying distances, but closer than 50' (fifty feet) from the wetland boundary, or boundary of areas of very poorly drained soils and poorly drained soils, the greater setback shall be observed. (Amended 2005)

E. (Deleted 1994)

F. No application of fertilizers, pesticides, insecticides, or herbicides shall occur in any tidal or inland wetlands, areas of poorly or very poorly drained soils, or their buffers. (Adopted March 2012)

G. No storage of yard waste, wood, or snow shall occur in any tidal or inland wetlands, areas of poorly or very poorly drained soils, or their buffers. (Adopted March 2012)

2.3.5 SPECIAL PERMITS: A use not otherwise permitted in the Wetlands Conservation District may be undertaken by Special Permit by application to the Planning Board. Provided such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the underlying use district. (Amended March 1998)

A. An application for special permit for activities in the Wetlands Conservation District shall be filed with the Town Planner who shall forward one copy to the Hampton Conservation Commission for review and recommendation. The Commission may make field inspections and consult with experts and the applicant may be required to bear the cost of such consultation. The Conservation Commission shall report its recommendations to the Planning Board within 40 days of the date on which the application is mailed or otherwise conveyed to the Chairman. Said report shall be submitted in writing at a regular meeting. (Amended 1999 & 2002, March 2012)

B. No special permit shall be granted unless it is found to be consistent with the purposes set forth in Section 2.3.1 and the spirit of this Ordinance. The Planning Board as part of this application shall hold a Public Hearing and notify abutters as required under RSA 676:4. (Amended 1998)

C. Any Special Permit granted by the Board shall expire two years from the date of said grant. If the work approved by the issuance of a Special Permit is not initiated during that time, the Special Permit becomes null and void. If the work approved is initiated but not completed during that time, the owners may apply for a two-year extension. A request for such extension must be filed at least one month prior to the Special Permit's expiration date. No more than two such extensions may be granted. (Amended March 2012)

2.3.6 DISPUTED BOUNDARIES: In any instance where there is doubt as to the location of the Wetlands Conservation District boundary the burden of proof shall be on the applicant or property owner to show the proper location of the boundary.

A. Evidence shall be obtained by onsite investigation and analysis conducted by a New Hampshire Certified Soil Scientist or other New Hampshire certified wetlands scientist. (Amended March, 1998)

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B. The Planning Board shall be responsible for making the final determination of the proper location of the boundary line.

1. Before making such determination the Planning Board shall review the evidence presented and shall consider the recommendation of the Conservation Commission. Where either the Planning Board or the Conservation Commission deems it necessary, they may consult an appropriate expert to review the studies submitted by the applicant to ascertain the proper location of the boundary. The applicant may be required to bear the cost of such consultation. The Planning Board shall notify the applicant of any such review and its probable cost before any consultant is hired.

2. The Planning Board shall render its decision in writing and set forth the evidence on which its conclusion is based.

3. A change to the wetland delineation, as a result of an appeal, made under this ordinance shall be recorded on a mylar with the Rockingham County Registry of Deeds. (Amended March 1998)

2.3.7 SPECIAL PROVISIONS

A. Where the Wetlands Conservation District is superimposed over another zoning district, the more restrictive regulations shall apply.

B. Lands, which may have been wetlands but were legally filled prior to March 12, 1985 shall be judged according to the soils and flora existing at the site at the time application for building permit or subdivision is made. (Amended 1998)

C. Land in the Wetlands Conservation District, excluding bodies of water, may be used to satisfy minimum lot area, and minimum lot area per dwelling unit, and set-back requirements for newly created lots provided that the following criteria are met: (Amended March 2012)

1. A minimum of 75% of the minimum lot area required in the underlying zoning district or 30,000 square feet (which ever is less) shall be outside of the Wetlands Conservation District;

2. For lots that will contain more than one dwelling unit, a minimum of 75% of the minimum lot area per dwelling unit required in the underlying zoning district or 30,000 square feet per dwelling unit (which ever is less) shall be outside of the Wetlands Conservation District;

3. The remaining lot area contains at least 5,000 contiguous square feet of buildable land outside of the Wetlands Conservation District for a municipally sewerred lot and 30,000 contiguous square feet of buildable land outside of the Wetlands Conservation District where on-site sewage disposal is required, provided that the septic system location and design are approved by the NH Department of Environmental Services, Water Supply and Pollution Control Division or successor State agency. (Amended 1998, 2003, March 2012)

C-a. Wetlands and areas of very poorly drained soils and poorly drained soils, excluding bodies of water, may be used to satisfy minimum lot area, and minimum lot area per dwelling unit, and set-back requirements for existing lots of record provided that:

1. A minimum of 75% of the minimum lot area required in the underlying zoning district or 30,000 square feet (whichever is less) shall be outside of the wetlands and areas of very poorly drained soils and poorly drained soils;

2. For lots that will contain more than one dwelling unit, a minimum of 75% of the minimum lot area per dwelling unit required in the underlying zoning district or 30,000 square feet per dwelling unit (whichever is less) shall be outside of the wetlands and areas of very poorly drained soils and poorly drained soils;

3. The remaining lot area contains at least 5,000 contiguous square feet of buildable land outside of the Wetlands Conservation District for a municipally sewerred lot and 30,000

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contiguous square feet of buildable land outside of the Wetlands Conservation District where on-site sewage disposal is required, provided that the septic system location and design are approved by the NH Department of Environmental Services, Water Supply and Pollution Control Division or successor State agency. (Amended 2005)

D. All land included in the Wetlands Conservation District shall be appraised for tax purposes either:

1. At its full and true value in money, based on its market value as undevelopable land required to remain in open space, or
2. At its value for current tax assessment purposes, provided that application is made for current use or discretionary easement as appropriate and the land is found eligible as provided in RSA 79-A and the regulations of the Current Use Advisory Board.

E. Enforcement of this Ordinance shall be the responsibility of the Selectmen and the Building Department, as provided in Article XVII of the Hampton Zoning Ordinance and in accordance with RSA 676:17 (Amended 1998), and additionally: (Amended March 2012)

1. Where the Wetlands Conservation District is suspected to have been illegally filled, since March 12, 1985, its condition shall be confirmed by digging through the fill by hand or backhoe and the presence of poorly or very poorly drained hydric soils beneath the fill shall be considered evidence of filling. The determination of the soil conditions shall be made by a New Hampshire certified soil or wetlands scientist, and paid by the applicant. (Amended 1998, 2003, March 2012)
2. Where a site's vegetation has been cleared, the presence of hydric soils shall be evidence of a wetland. (Amended 1998)
3. Ground and aerial photography may be consulted to examine the wetlands and buffers to confirm the possibility of violation. (Amended 1998)
4. Within 60 days of written notice of a confirmed violation, the property owner shall submit a written Restoration Plan to the Conservation Commission for approval. The property owner shall be financially responsible for the restoration of the violation. If the property owner does not restore the violated site as stated under the Conservation Commission recommendation, the property shall be ineligible for a Building Permit and/or a Certificate of Occupancy as cited in RSA 676:13 I. (Amended 1998)

F. If any provision of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or invalidate any other provision of this Ordinance.

APPENDIX

Detailed descriptive materials and maps of wetlands and wetland soils and flora in the Town of Hampton are found in the following reports or their more recent revisions, which are incorporated herein by reference. (Amended 1998)

1. IDENTIFICATION, DOCUMENTATION AND MAPPING OF PRIME TIDAL WETLANDS IN THE TOWN OF HAMPTON, NEW HAMPSHIRE, prepared for the Hampton Conservation Commission and the Office of State Planning by Frank D. Richardson, Department of Botany and Plant Pathology, University of New Hampshire, 30 December 1982.

2. SOIL SURVEY OF NEW HAMPSHIRE TIDAL MARSHES, by Charles H.J. Breeding and Frank D. Richardson, New Hampshire Agricultural Experiment Station, University of New Hampshire, Durham, NH in cooperation with the U.S. Department of Agriculture. Soil Conservation Service, Research Report Number 40, October, 1974.

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3. SOILS INFORMATION FOR RESOURCE PLANNING, HAMPTON, NH, April 1982, U.S. Soil Conservation Service. Reference is made to the reports of Barry H. Keith submitted to the Hampton Conservation Commission in 1980 entitled THE WETLANDS OF HAMPTON, NEW HAMPSHIRE and RESULTS, HAMPTON, NH WETLANDS SURVEY.
4. STORM WATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL HANDBOOK FOR URBAN AND DEVELOPING AREAS IN NH, New Hampshire Department of Environmental Services, Rockingham County Conservation District, USDA Soil Conservation Service, August, 1992.